IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1) F.A.O. No.5532 of 2006

United India Insurance Company Ltd.

..... Appellant

Versus

Rajender Singh and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Uma Nath Singh
Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Vinod Chaudhri, Advocate for the appellant.

....

Mahesh Grover,J.

The Insurance Company of the offending vehicle is in appeal against the award dated 12.9.2006 of the Motor Accident Claims Tribunal, Hisar (hereinafter described as `the Tribunal') passed in Petition No.72-MACT of 2003.

On 28.2.2003, the injured-claimant had gone to his fields on his bicycle and while returning back, a motor-cycle being driven rashly struck against him on account of which he sustained injuries including a fracture. The claimant had suffered 17% disability on account of such injuries. He

preferred a claim petition under the provisions of Section 166 of the Motor Vehicles Act,1988 which was answered in his favour and a compensation of Rs.65,953/- along with interest at the rate of 6% per annum was awarded.

The award has been challenged by the appellant on the ground that the vehicle in question was not involved in the accident and the findings of the Tribunal have been incorrectly recorded. Besides this, it was pleaded that the injured himself was guilty of contributory negligence as it has come in medical evidence that he was smelling of alcohol.

We have heard learned counsel for the appellant and have perused the award.

The accident took place on 28.2.2003 at 5.30 P.M. and the injured was admitted to the hospital on the same night at about 10.30 P.M. The F.I.R. was lodged on 1.3.2003 and a report under Section 173 of the Code of Criminal Procedure,1973 had also been filed against the driver of the motor cycle, who is facing trial. The sequence of events afore-stated establishes the involvement and the identity of the motor cycle beyond the pale of doubt. The driver of the offending vehicle was also admitted in the hospital on the same day and the medical testimony on record shows that he was found to be drunk. In so far as the claimant is concerned, it has been stated that the smell of alcohol could be on account of consumption of cough syrup as well. There is nothing on record to establish that the claimant was in an intoxicated condition so as to have invited the accident. There is, thus, no infirmity in the findings of the Tribunal on this aspect.

Further, an amount of Rs.65953/- has been awarded for 17% disability suffered by the claimant and on account of medicines,

hospitalization charges, special diet, pain, suffering and attendant charges. The injured had suffered serious injuries on his leg as a result of which a rod had been inserted in the femur bone which entailed surgical treatment. In these circumstances, the amount of compensation cannot be termed to be excessive.

For the reasons stated above, the appeal is devoid of any merit and is dismissed as such.

(Uma Nath Singh)
Judge

(Mahesh Grover)
Judge

December 21,2006
"SCM"